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# IN THE
# COURT OF APPEALS OF INDIANA

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| JOHN TREZZA, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A02-0611-CR-1052 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49F09-0608-CM-146786

**September 19, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

John Trezza appeals his conviction for Class D felony criminal recklessness. We affirm.

## Issue

Trezza raises one issue, which we restate as whether there is sufficient evidence to support his conviction.

## Facts

On August 8, 2006, Trezza was working at the Indiana State Fair where he had been setting up rides or games. At 4:00 p.m. he was driving on West Avenue, a three-lane road in Indianapolis. Trezza was driving in the middle lane when he "closed his eyes," and upon opening them, he swerved to the right to avoid hitting a minivan in front of him. Tr. p. 54. When he swerved, he "lightly struck" a car parked on the right side of the road. Trezza's car then jumped the curb. Id. at 35. He drove seventy to one hundred yards toward a group of five children who were spreading straw for cattle. Trezza's car struck an eleven-year-old boy who suffered injuries to his knees, a broken nose, and headaches. After the accident, Trezza got out of his car and started walking away until a witness told him to stop.

That same day, the State charged Trezza with Class A misdemeanor criminal recklessness. The information was later amended to include a second charge of a Class D felony criminal recklessness. On October 11, 2006, a jury found him not guilty of the

Class A misdemeanor criminal recklessness charge and guilty of the Class D felony criminal recklessness charge. Trezza now appeals.

**Analysis**

Trezza argues that there is insufficient evidence to support the recklessness element of his conviction. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." Id. We affirm the conviction unless no reasonable fact-finder could find the elements of the crime were proven beyond a reasonable doubt. Id. There is sufficient evidence to support a conviction if an inference may reasonably be drawn from it to support the verdict. Id.

A person who recklessly, knowingly, or intentionally inflicts serious bodily injury on another person commits criminal recklessness, a Class D felony. Ind. Code § 35-42-2-2(d). "A person engages in conduct 'recklessly' if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct." I.C. § 35-41-2-2(c).

Trezza argues that there is insufficient evidence that he acted recklessly. In making this argument he points to the fact that there is no specific evidence that he was driving over the speed limit. He also argues that there is no evidence that his driving was impaired.

The State responds by arguing that the primary cause of the accident was "unsafe speed or speed too fast for conditions." Tr. p. 49. The State also points out that the secondary cause of the accident was that Trezza was taking several prescription medications. Specifically, Trezza had taken "phenogrin for nausea, some pancreatic enzymes, a type of Parkinson's medication, anti-depressant medication and had removed a 50-microgram fentanyl patch earlier that morning." Tr. p. 56. The State also notes that Trezza had been working outside on a hot summer day without drinking enough water, that he passed the minivan on the right striking the parked car, and that he began to walk away after the accident as further evidence of his recklessness.[1] The State urges that the totality of the circumstances rises to the level of recklessness.

We cannot agree with the State that taking several prescription supports an inference that Trezza's behavior was reckless. Here, the field sobriety tests and preliminary breath test offered no indication that Trezza was intoxicated. Further, there was no evidence of impairment due to the medication, nor was there evidence that Trezza was warned not to drive while taking any or all of the medications. Also, we cannot

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[1] The State also argues:

> Defendant knew that he had several medications in his body. Many medications have some impact on a person's judgment and physical responses, and Defendant, who has no valid driver's license and claims that he rarely driven in the last several years (Tr. 116, 118) could not have had any good idea of how this mix of medications might affect him behind the wheel.

Appellee's Br. p. 6. The State's support for this argument, however, comes from Trezza's testimony at the sentencing hearing. We will not consider it as probative evidence supporting his convictions.

agree with the State's position that Trezza's working outside all day and not drinking enough water contributed to his recklessness.

We can conclude, however, based on Trezza's driving alone that he was reckless. Trezza approached the minivan at an excessive speed for the circumstances and conditions present, and to avoid a collision, he passed on the right, hitting a parked car. Trezza then "shot up onto the curb and headed straight for the kids." Tr. p. 14. Further, the investigating officer "did not see very hard evidence of any heavy breaking." Tr. p. 47. It was a pile of straw that eventually stopped Trezza's car.

The facts before us today are not like those in Clancy v. State, 829 N.E.2d 203, 209 (Ind. Ct. App. 2005), trans. denied, in which we concluded there was insufficient evidence of recklessness where the driver of a car fell asleep at the wheel. We applied a civil willful or wanton misconduct standard, which was defined in part as:

> either (1) an intentional act done with reckless disregard of the natural and probable consequence of injury to a known person under the circumstances known to the actor at the time; or (2) an omission or failure to act when the actor has actual knowledge of the natural and probable consequence of injury and his opportunity to avoid the risk.

Clancy, 829 N.E.2d at 208. We held there was no evidence that Clancy consciously ignored substantial premonitory symptoms of impending sleep. Id. at 209. However, whether Trezza fell asleep at the wheel or ignored signs of sleepiness is simply not at issue here. Instead, we focus here on Terra's erratic yet conscious driving immediately before hitting the child. Our holding in Clancy is not is not applicable to this case.

Even if we were to apply the Clancy standard, "[t]he trier of fact determines whether the defendant's conduct meets the statutory definition of recklessness." Savage v. State, 650 N.E.2d 1156, 1161 (Ind. Ct. App. 1995), rev'd on other grounds. Based on the evidence of Trezza's speed, his decision to pass the minivan on the right, and his inability to stop the vehicle because of the speed he was traveling, it was for the jury to decide whether Trezza actions were reckless, willful, or wanton. There is sufficient evidence to support Trezza's conviction for Class D felony criminal recklessness.

**Conclusion**

There is sufficient evidence to support Trezza's conviction. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.